



## Appendix C

### Civil Child Abuse Statutes

#### Autopsies

VA Code §32.1–285

[I]n all cases of death suspected to be attributable to Sudden Infant Death Syndrome (SIDS), an autopsy shall be advisable and in the public interest and shall be performed as required by §32.1–285.1.

#### Deaths of infants under 18 months of age

VA Code §32.1–285.1

An autopsy shall be performed in the case of any infant death which is suspected to be attributable to Sudden Infant Death Syndrome (SIDS).

For the purposes of this section, “Sudden Infant Death Syndrome” (SIDS), a diagnosis of exclusion, means the sudden and unexpected death of an infant less than eighteen months of age whose death remains unexplained after a thorough postmortem examination which includes an autopsy.

#### Definitions

VA Code §63.2–100

As used in this title, unless the context requires a different meaning: “Abused or neglected child” means any child less than eighteen years of age:

- A. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions;
- B. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health.

However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

- C. Whose parents or other person responsible for his care abandons such child;
- D. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law; or
- E. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child’s parent, guardian, legal custodian or other person standing in loco parentis.

“Board” means the State Board of Social Services.

“Child” means any natural person under eighteen years of age.

“Child-protective services” means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under eighteen years of age. It also includes assessment,

and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

“Commissioner” means the Commissioner of the Department, his designee or authorized representative.

“Department” means the State Department of Social Services.

“Foster care placement” means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

“Foster home” means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

“Independent foster home” means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of §16.1–278.2, subdivision 6 of §16.1–278.4, or subdivision A 13 of §16.1–278.8.

#### **Acceptance of children by local departments of social services** **VA Code §63.2–910.1**

A local department of social services has the authority to take custody of abandoned children, to arrange appropriate placements for abandoned children, including foster care, and to institute proceedings for the termination of parental rights of abandoned children as provided in this title and Title 16.1.

#### **Definitions** **VA Code §63.2–1501**

As used in this chapter unless the context requires a different meaning:

“Court” means the juvenile and domestic relations district court of the county or city.

“Prevention” means efforts that (i) promote health and competence in people and (ii) create, promote and strengthen environments that nurture people in their development.

#### **Establishment of Child-Protective Services Unit; duties** **VA Code §63.2–1502**

There is created a Child-Protective Services Unit in the Department that shall have the following powers and duties:

- A. To evaluate and strengthen all local, regional and state programs dealing with child abuse and neglect.
- B. To assume primary responsibility for directing the planning and funding of child-protective services. This shall include reviewing and approving the annual proposed plans and budgets for protective services submitted by the local departments.

- C. To assist in developing programs aimed at discovering and preventing the many factors causing child abuse and neglect.
- D. To prepare and disseminate, including the presentation of, educational programs and materials on child abuse and neglect.
- E. To provide educational programs for professionals required by law to make reports under this chapter.
- F. To establish standards of training and provide educational programs to qualify workers in the field of child-protective services.
- G. To establish standards of training and educational programs to qualify workers to determine whether complaints of abuse or neglect of a child in a private or state-operated hospital, institution or other facility, or public school, are founded.
- H. To maintain staff qualified pursuant to Board regulations to assist local department personnel in determining whether an employee of a private or state-operated hospital, institution or other facility or an employee of a school board, abused or neglected a child in such hospital, institution, or other facility, or public school.
- I. To monitor the processing and determination of cases where an employee of a private or state-operated hospital, institution or other facility, or an employee of a school board, is suspected of abusing or neglecting a child in such hospital, institution, or other facility, or public school.
- J. To help coordinate child-protective services at the state, regional, and local levels with the efforts of other state and voluntary social, medical and legal agencies.
- K. To maintain a child abuse and neglect information system that includes all cases of child abuse and neglect within the Commonwealth.
- L. To provide for methods to preserve the confidentiality of all records in order to protect the rights of the child, and his parents or guardians.

#### **Duties of child protective services**

#### **VA Code §63.2-1503**

- A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments that shall be staffed with qualified personnel pursuant to regulations adopted by the Board. The local department shall be the public agency responsible for receiving and responding to complaints and reports, except that (i) in cases where the reports or complaints are to be made to the court and the judge determines that no local department within a reasonable geographic distance can impartially respond to the report, the court shall assign the report to the court services unit for evaluation; and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility, or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school, the local department shall request the Department and the relevant private or state-operated hospital, institution or other facility, or school board to assist in conducting a joint

investigation in accordance with regulations adopted by the Board, in consultation with the Departments of Education, Health, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, Juvenile Justice and Corrections.

- B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a twenty-four-hours-a-day, seven-days-per-week basis.
- C. The local department shall widely publicize a telephone number for receiving complaints and reports.
- D. The local department shall upon receipt of a complaint, report immediately to the attorney for the Commonwealth and the local law-enforcement agency and make available to them the records of the local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii) injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in §18.2–374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of §18.2–371, and provide the attorney for the Commonwealth and the local law-enforcement agency with records of any complaints of abuse or neglect involving the victim or the alleged perpetrator. The local department shall not allow reports of the death of the victim from other local agencies to substitute for direct reports to the attorney for the Commonwealth and the local law-enforcement agency.
- E. When abuse or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the regional medical examiner and the local law-enforcement agency.
- F. The local department shall use reasonable diligence to locate (i) any child for whom a report of suspected abuse or neglect has been received and is under investigation, receiving family assessment, or for whom a founded determination of abuse and neglect has been made and a child-protective services case opened and (ii) persons who are the subject of a report that is under investigation or receiving family assessment, if the whereabouts of the child or such persons are unknown to the local department.
- G. When an abused or neglected child and the persons who are the subject of an open child-protective services case have relocated out of the jurisdiction of the local department, the local department shall notify the child-protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant portions of the case record. The receiving local department shall arrange protective and rehabilitative services as required by this section.

- H. When a child for whom a report of suspected abuse or neglect has been received and is under investigation or receiving family assessment and the child and the child's parents or other persons responsible for the child's care who are the subject of the report that is under investigation or family assessment have relocated out of the jurisdiction of the local department, the local department shall notify the child-protective services agency in the jurisdiction to which the child and such persons have relocated, whether inside or outside of the Commonwealth, and complete such investigation or family assessment by requesting such agency's assistance in completing the investigation or family assessment. The local department that completes the investigation or family assessment shall forward to the receiving agency relevant portions of the case record in order for the receiving agency to arrange protective and rehabilitative services as required by this section.
- I. Upon receipt of a report of child abuse or neglect, the local department shall determine the validity of such report and shall make a determination to conduct an investigation pursuant to §63.2-1505 or, if designated as a child-protective services differential response agency by the Department according to §63.2-1504, a family assessment pursuant to §63.2-1506.
- J. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multi-disciplinary teams that shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. These teams may be the family assessment and planning teams established pursuant to §2.2-5207. Multi-disciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services, and child protection. Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of §§63.2-102, 63.2-104 or §63.2-105.

The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

- K. The local department shall develop, where practical, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the attorney for the Commonwealth.
- L. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department.

- M. Statements, or any evidence derived there from, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case-in-chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.
- N. Notwithstanding any other provision of law, the local department, in accordance with Board regulations, shall transmit information regarding founded complaints or family assessments and may transmit other information regarding reports, complaints, family assessments and investigations involving active duty military personnel or members of their household to family advocacy representatives of the United States Armed Forces.

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**Child-protective services differential response system****VA Code §63.2–1504**

The Department shall implement a child-protective services differential response system in all local departments. The differential response system allows local departments to respond to valid reports or complaints of child abuse or neglect by conducting either an investigation or a family assessment. The Department shall publish a plan to implement the child-protective services differential response system in local departments by July 1, 2000, and complete implementation in all local departments by July 1, 2003. The Department shall develop a training program for all staff persons involved in the differential response system, and all such staff shall receive this training.

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**Investigations by local departments****VA Code §63.2–1505**

- A. An investigation requires the collection of information necessary to determine:
  - 1. The immediate safety needs of the child;
  - 2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
  - 3. Risk of future harm to the child;
  - 4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;
  - 5. Whether abuse or neglect has occurred;
  - 6. If abuse or neglect has occurred, who abused or neglected the child; and
  - 7. A finding of either founded or unfounded based on the facts collected during the investigation.
- B. If the local department responds to the report or complaint by conducting an investigation, the local department shall:



1. Make immediate investigation and, if the report or complaint was based upon one of the factors specified in subsection B of §63.2-1509, the local department may file a petition pursuant to §16.1-241.3;
2. Complete a report and transmit it forthwith to the Department, except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in subsection B of §63.2-1509 and the mother sought substance abuse counseling or treatment prior to the child's birth;
3. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family;
4. Petition the court for services deemed necessary including, but not limited to, removal of the child or his siblings from their home;
5. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the Department and to the person who is the subject of the investigation. However, upon written justification by the local department, such determination may be extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the local department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the forty-five-day or sixty-day period and documentation of such reasonable diligence shall be placed in the record; and
6. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect.

#### **Family assessments by local departments**

#### **VA Code §63.2-1506**

- A. A family assessment requires the collection of information necessary to determine:
  1. The immediate safety needs of the child;
  2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
  3. Risk of future harm to the child; and
  4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services.
- B. When a local department has been designated as a child-protective services differential response system participant by the Department pursuant to §63.2-1504 and responds to the report or complaint by conducting a family assessment, the local department shall:

1. Conduct an immediate family assessment and, if the report or complaint was based upon one of the factors specified in subsection B of §63.2–1509, the local department may file a petition pursuant to §16.1–241.3;
  2. Immediately contact the subject of the report and the family of the child alleged to have been abused or neglected and give each a written and an oral explanation of the family assessment procedure. The family assessment shall be in writing and shall be completed in accordance with Board regulation;
  3. Complete the family assessment within forty-five days and transmit a report to such effect to the Department and to the person who is the subject of the family assessment. However, upon written justification by the local department, the family assessment may be extended, not to exceed a total of sixty days;
  4. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family. Families have the option of declining the services offered as a result of the family assessment. If the family declines the services, the case shall be closed unless the local department determines that sufficient cause exists to redetermine the case as one that needs to be investigated. In no instance shall a case be redetermined as an investigation solely because the family declines services;
  5. Petition the court for services deemed necessary;
  6. Make no disposition of founded or unfounded for reports in which a family assessment is completed. Reports in which a family assessment is completed shall not be entered into the central registry contained in §63.2–1515; and
  7. Commence an immediate investigation, if at any time during the completion of the family assessment, the local department determines that an investigation is required.
- C. When a local department has been designated as a child-protective services differential response agency by the Department, the local department may investigate any report of child abuse or neglect, but the following valid reports of child abuse or neglect shall be investigated: (i) sexual abuse, (ii) child fatality, (iii) abuse or neglect resulting in serious injury as defined in §18.2–371.1, (iv) child has been taken into the custody of the local department, or (v) cases involving a caretaker at a state-licensed child day center, religiously exempt child day center, licensed, registered or approved family day home, private or public school, hospital or any institution.

### **Multi-disciplinary cooperation**

### **VA Code §63.2–1507**

All law enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each Child Protective Services Coordinator of a local department and any multi-discipline teams in the detection and prevention of child abuse.

Valid report or complaint. VA Code §63.2–1508. A valid report or complaint means the local department has evaluated the information and allegations of the report or complaint and determined that the local department shall conduct an investigation or family assessment because the following elements are present:



- A. The alleged victim child or children are under the age of eighteen at the time of the complaint or report;
- B. The alleged abuser is the alleged victim child's parent or other caretaker;
- C. The local department receiving the complaint or report has jurisdiction; and
- D. The circumstances described allege suspected child abuse or neglect.

Nothing in this section shall relieve any person specified in §63.2-1509 from making a report required by that section, regardless of the identity of the person suspected to have caused such abuse or neglect.

**Physicians, nurses, teachers, etc., to report certain injuries  
to children; penalty for failure to report**

**VA Code §63.2-1509**

- A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll-free child abuse and neglect hotline:
  - 1. Any person licensed to practice medicine or any of the healing arts;
  - 2. Any hospital resident or intern, and any person employed in the nursing profession;
  - 3. Any person employed as a social worker;
  - 4. Any probation officer;
  - 5. Any teacher or other person employed in a public or private school, kindergarten or nursery school;
  - 6. Any person providing full-time or part-time child care for pay on a regularly planned basis;
  - 7. Any duly accredited Christian Science practitioner;
  - 8. Any mental health professional;
  - 9. Any law-enforcement officer;
  - 10. Any mediator eligible to receive court referrals pursuant to §8.01-576.8;
  - 11. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment;
  - 12. Any person associated with or employed by any private organization responsible for the care, custody or control of children; and

13. Any person who is designated a court-appointed special advocate pursuant to Article 5 (§9.1–151 et seq.) of Chapter 1 of Title 9.1.

If neither the locality in which the child resides nor where the abuse or neglect is believed to have occurred is known, then such report shall be made to the local department of the county or city where the abuse or neglect was discovered or to the Department’s toll-free child abuse and neglect hotline.

If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge shall assign the report to a local department that is not the employer of the suspected employee for investigation or family assessment. The judge may consult with the Department in selecting a local department to respond to the report or the complaint.

If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith.

The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the Board. Any person required to make the report pursuant to this subsection shall disclose all information that is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department, which is the agency of jurisdiction, any information, records or reports that document the basis for the report. All persons required by this subsection to report suspected abuse or neglect who maintain a record of a child who is the subject of such a report shall cooperate with the investigating agency and shall make related information, records and reports available to the investigating agency unless such disclosure violates the federal Family Educational Rights and Privacy Act (20 U.S.C. §1232(g)). Provision of such information, records and reports by a health care provider shall not be prohibited by §8.01–399. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure.

- B. For purposes of subsection A, “reason to suspect that a child is abused or neglected” shall include (i) a finding made by an attending physician within seven days of a child’s birth that the results of a blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician; (ii) a finding by an attending physician made within forty-eight hours of a child’s birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms; (iii) a diagnosis by an attending physician made within seven days of a child’s birth that the child has an illness, disease or condition which, to a reasonable

degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child; or (iv) a diagnosis by an attending physician made within seven days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report.

- C. Any person who makes a report or provides records or information pursuant to subsection A or who testifies in any judicial proceeding arising from such report, records or information shall be immune from any civil or criminal liability or administrative penalty or sanction on account of such report, records, information or testimony, unless such person acted in bad faith or with malicious purpose.
- D. Any person required to file a report pursuant to this section who fails to do so within seventy-two hours of his first suspicion of child abuse or neglect shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$100 nor more than \$1,000.

#### **Complaints by others of certain injuries to children**

**VA Code §63.2-1510**

Any person who suspects that a child is an abused or neglected child may make a complaint concerning such child, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll-free child abuse and neglect hotline. If an employee of the local department is suspected of abusing or neglecting a child, the complaint shall be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge shall assign the report to a local department that is not the employer of the suspected employee for investigation or family assessment; or, if the judge believes that no local department in a reasonable geographic distance can be impartial in responding to the reported case, the judge shall assign the report to the court service unit of his court for evaluation. The judge may consult with the Department in selecting a local department to respond to the report or complaint. Such a complaint may be oral or in writing and shall disclose all information which is the basis for the suspicion of abuse or neglect of the child.

#### **Complaints of abuse and neglect against school personnel**

**VA Code §63.2-1511**

- A. If a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth is suspected of abusing or neglecting a child in the course of his educational employment, the complaint shall be investigated in accordance with §§63.2-1503 and, 63.2-1505 and 63.2-1516.1. Pursuant to §22.1-279.1, no teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth shall subject a student to corporal punishment. However, this prohibition of corporal punishment shall not be deemed to prevent (i) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force

for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are upon the person of the student or within his control. In determining whether the actions of a teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth are within the exceptions provided in this section, the local department shall examine whether the actions at the time of the event that were made by such person were reasonable.

- B. For purposes of this section, “corporal punishment” or “abused or neglected child” shall not include physical pain, injury or discomfort caused by the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control as permitted in clause (i) of subsection A or the use of reasonable and necessary force as permitted by clauses (ii), (iii), (iv), and (v) of subsection A, or by participation in practice or competition in an interscholastic sport, or participation in physical education or an extracurricular activity.
- C. Each local department of social services and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.

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**Immunity of person making report, etc., from liability****VA Code §63.2-1512**

Any person making a report pursuant to §63.2-1509, a complaint pursuant to §63.2-1510, or who takes a child into custody pursuant to §63.2-1517, or who participates in a judicial proceeding resulting there from shall be immune from any civil or criminal liability in connection therewith, unless it is proven that such person acted in bad faith or with malicious intent.

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**Knowingly making false reports; penalties****VA Code §63.2-1513**

- A. Any person fourteen years of age or older who makes or causes to be made a report of child abuse or neglect pursuant to this chapter that he knows to be false shall be guilty of a Class 1 misdemeanor. Any person fourteen years of age or older who has been previously convicted under this subsection and who is subsequently convicted under this subsection shall be guilty of a Class 6 felony.
- B. The child-protective services records regarding the person who was alleged to have committed abuse or neglect that result from a report for which a conviction is obtained under this section shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of such conviction. After purging the records, the custodian shall notify the person in writing that such records have been purged.

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**Retention of records in all reports; procedures regarding unfounded****reports alleged to be made in bad faith or with malicious intent** **VA Code §63.2-1514**

- A. The local department shall retain the records of all reports or complaints made pursuant to this chapter, in accordance with regulations adopted by the Board.

- B. The Department shall maintain a child abuse and neglect information system that includes a central registry of founded complaints, pursuant to §63.2–1515. The Department shall maintain all (i) unfounded investigations, (ii) family assessments, and (iii) reports or complaints determined to be not valid in a record which is separate from the central registry and accessible only to the Department and to local departments for child-protective services. The purpose of retaining these complaints or reports is to provide local departments with information regarding prior complaints or reports. In no event shall the mere existence of a prior complaint or report be used to determine that a subsequent complaint or report is founded. The subject of the complaint or report is the person who is alleged to have committed abuse or neglect. The subject of the complaint or report shall have access to his own record. The record of unfounded investigations and complaints and reports determined to be not valid shall be purged one year after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the complaint or report in that one year. The local department shall retain such records for an additional period of up to two years if requested in writing by the person who is the subject of such complaint or report. The record of family assessments shall be purged three years after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the report in that three-year period. The child-protective services records regarding the petitioner which result from such complaint or report shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of a court order that there has been a civil action that determined that the complaint or report was made in bad faith or with malicious intent. After purging the records, the custodian shall notify the petitioner in writing that the records have been purged.
- C. At the time the local department notifies a person who is the subject of a complaint or report made pursuant to this chapter that such complaint or report is either an unfounded investigation or a completed family assessment, it shall notify him how long the record will be retained and of the availability of the procedures set out in this section regarding reports or complaints alleged to be made in bad faith or with malicious intent.
- D. Any person who is the subject of an unfounded report or complaint made pursuant to this chapter who believes that such report or complaint was made in bad faith or with malicious intent may petition the circuit court in the jurisdiction in which the report or complaint was made for the release to such person of the records of the investigation or family assessment. Such petition shall specifically set forth the reasons such person believes that such report or complaint was made in bad faith or with malicious intent. Upon the filing of such petition, the circuit court shall request and the local department shall provide to the circuit court its records of the investigation or family assessment for the circuit court's *in camera* review. The petitioner shall be entitled to present evidence to support his petition. If the circuit court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad faith or with malicious intent and that disclosure of the identity of the complainant would not be likely to endanger the life or safety of the complainant, it shall provide to the petitioner a copy of the records of the investigation or



family assessment. The original records shall be subject to discovery in any subsequent civil action regarding the making of a complaint or report in bad faith or with malicious intent.

### **Central registry; disclosure of information**

### **VA Code §63.2-1515**

The central registry shall contain such information as shall be prescribed by Board regulation; however, when the founded case of abuse or neglect does not name the parents or guardians of the child as the abuser or neglecter, and the abuse or neglect occurred in a licensed or unlicensed child day center, a licensed, registered or approved family day home, a private or public school, or a children's residential facility, the child's name shall not be entered on the registry without consultation with and permission of the parents or guardians. If a child's name currently appears on the registry without consultation with and permission of the parents or guardians for a founded case of abuse and neglect that does not name the parents or guardians of the child as the abuser or neglecter, such parents or guardians may have the child's name removed by written request to the Department. The information contained in the central registry shall not be open to inspection by the public. However, appropriate disclosure may be made in accordance with Board regulations.

The Department shall respond to requests for a search of the central registry made by (i) local departments and (ii) local school boards regarding applicants for employment, pursuant to §§22.1-296.4, in cases where there is no match within the central registry within ten business days of receipt of such requests. In cases where there is a match within the central registry regarding applicants for employment, the Department shall respond to requests made by local departments and local school boards within thirty business days of receipt of such requests. The response may be by first-class mail or facsimile transmission.

Any central registry check of a person who has applied to be a volunteer with a (a) Virginia affiliate of Big Brothers/Big Sisters of America, (b) Virginia affiliate of Compeer, (c) volunteer fire company or volunteer rescue squad, or (d) with a court-appointed special advocate program pursuant to §9.1-153 shall be conducted at no charge.

### **Tape recording child abuse investigations**

### **VA Code §63.2-1516**

Any person who is suspected of abuse or neglect of a child and who is the subject of an investigation or family assessment pursuant to this chapter may tape record any communications between him and child-protective services personnel that take place during the course of such investigation or family assessment, provided all parties to the conversation are aware the conversation is to be recorded. The parties' knowledge of the recording shall be demonstrated by a declaration at the beginning of the recorded portion of the conversation that the recording is to be made. If a person who is suspected of abuse or neglect of a child and who is the subject of an investigation or family assessment pursuant to this chapter elects to make a tape recording as provided in this section, the child-protective services personnel may also make such a recording.

### **Investigation procedures when school employee is subject of the**

### **complaint or report; release of information in joint investigations VA Code §63.2-1516.1**

- A. Except as provided in subsection B of this section, in cases where a child is alleged to have been abused or neglected by a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth, in the course of such employment in a



nonresidential setting, the local department conducting the investigation shall comply with the following provisions in conducting its investigation:

1. The local department shall conduct a face-to-face interview with the person who is the subject of the complaint or report.
  2. At the onset of the initial interview with the alleged abuser or neglecter, the local department shall notify him in writing of the general nature of the complaint and the identity of the alleged child victim regarding the purpose of the contacts.
  3. The written notification shall include the information that the alleged abuser or neglecter has the right to have an attorney or other representative of his choice present during his interviews. However, the failure by a representative of the Department of Social Services to so advise the subject of the complaint shall not cause an otherwise voluntary statement to be inadmissible in a criminal proceeding.
  4. Written notification of the findings shall be submitted to the alleged abuser or neglecter. The notification shall include a summary of the investigation and an explanation of how the information gathered supports the disposition.
  5. The written notification of the findings shall inform the alleged abuser or neglecter of his right to appeal.
  6. The written notification of the findings shall inform the alleged abuser or neglecter of his right to review information about himself in the record with the following exceptions:
    - a. The identity of the person making the report.
    - b. Information provided by any law-enforcement official.
    - c. Information that may endanger the well-being of the child.
    - d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.
- B. In all cases in which an alleged act of child abuse or neglect is also being criminally investigated by a law-enforcement agency, and the local department is conducting a joint investigation with a law-enforcement officer in regard to such an alleged act, no information in the possession of the local department from such joint investigation shall be released by the local department except as authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.
- C. Failure to comply with investigation procedures does not preclude a finding of abuse or neglect if such a finding is warranted by the facts.

**Authority to take child into custody****VA Code §63.2–1517**

- A. A physician or child-protective services worker of a local department or law-enforcement official investigating a report or complaint of abuse and neglect may take a child into custody for up to seventy-two hours without prior approval of parents or guardians provided:
1. The circumstances of the child are such that continuing in his place of residence or in the care or custody of the parent, guardian, custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health to the extent that severe or irreparable injury would be likely to result or if evidence of abuse is perishable or subject to deterioration before a hearing can be held;
  2. A court order is not immediately obtainable;
  3. The court has set up procedures for placing such children;
  4. Following taking the child into custody, the parents or guardians are notified as soon as practicable that he is in custody;
  5. A report is made to the local department; and
  6. The court is notified and the person or agency taking custody of such child obtains, as soon as possible, but in no event later than seventy-two hours, an emergency removal order pursuant to §16.1–251; however, if a preliminary removal order is issued after a hearing held in accordance with §16.1–252 within seventy-two hours of the removal of the child, an emergency removal order shall not be necessary.
- B. If the seventy-two-hour period for holding a child in custody and for obtaining a preliminary or emergency removal order expires on a Saturday, Sunday, or legal holiday or day on which the court is lawfully closed, the seventy-two hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday or day on which the court is lawfully closed.

**Authority to talk to child or sibling****VA Code §63.2–1518**

Any person required to make a report or conduct an investigation or family assessment, pursuant to this chapter may talk to any child suspected of being abused or neglected or to any of his siblings without consent of and outside the presence of his parent, guardian, legal custodian, or other person standing in loco parentis, or school personnel.

**Physician-patient and husband-wife privileges inapplicable****VA Code §63.2–1519**

In any legal proceeding resulting from the filing of any report or complaint pursuant to this chapter, the physician-patient and husband-wife privileges shall not apply.

**Photographs and X-rays of child; use as evidence****VA Code §63.2–1520**

In any case of suspected child abuse, photographs and X-rays of the child may be taken without the consent of the parent or other person responsible for such child as a part of the medical evaluation. Photographs of the child may also be taken without the consent of the parent or other person responsible for such child as

a part of the investigation or family assessment of the case by the local department or the court; however, such photographs shall not be used in lieu of medical evaluation. Such photographs and X-rays may be introduced into evidence in any subsequent proceeding.

The court receiving such evidence may impose such restrictions as to the confidentiality of photographs of any minor as it deems appropriate.

#### **Testimony by child using two-way closed-circuit television**

**VA Code §63.2–1521**

- A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§16.1–241, 16.1–251, 16.1–252, 16.1–253, 16.1–283 or §20–107.2, the child’s attorney or guardian ad litem or, if the child has been committed to the custody of a local department, the attorney for the local department may apply for an order from the court that the testimony of the alleged victim or of a child witness be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The person seeking such order shall apply for the order at least seven days before the trial date.
- B. The provisions of this section shall apply to the following:
  - 1. An alleged victim who was fourteen years of age or under on the date of the alleged offense and is sixteen or under at the time of the trial; and
  - 2. Any child witness who is fourteen years of age or under at the time of the trial.
- C. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsections A and B if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons:
  - 1. The child’s persistent refusal to testify despite judicial requests to do so;
  - 2. The child’s substantial inability to communicate about the offense; or
  - 3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Any ruling on the child’s unavailability under this subsection shall be supported by the court with findings on the record or with written findings in a court not of record.
- D. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the child and the defendant’s attorney and, if the child has been committed to the custody of a local board, the attorney for the local board shall be present in the room with the child, and the child shall be subject to direct and cross examination. The only other persons allowed to be present in the room with the child during his testimony shall be the guardian ad litem, those persons necessary to operate the closed-circuit equipment, and any other person whose presence is determined by the court to be necessary to the welfare and well-being of the child.

- E. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.

#### **Admission of evidence of sexual acts with children**

#### **VA Code §63.2-1522**

- A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or §20-107.2, an out-of-court statement made by a child the age of twelve or under at the time the statement is offered into evidence, describing any act of a sexual nature performed with or on the child by another, not otherwise admissible by statute or rule, may be admissible in evidence if the requirements of subsection B are met.
- B. An out-of-court statement may be admitted into evidence as provided in subsection A if:
1. The child testifies at the proceeding, or testifies by means of a videotaped deposition or closed-circuit television, and at the time of such testimony is subject to cross examination concerning the out-of-court statement or the child is found by the court to be unavailable to testify on any of these grounds:
    - a. The child's death;
    - b. The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify;
    - c. The child's total failure of memory;
    - d. The child's physical or mental disability;
    - e. The existence of a privilege involving the child;
    - f. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason; and
    - g. The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television.
  2. The child's out-of-court statement is shown to possess particularized guarantees of trustworthiness and reliability.
- C. A statement may not be admitted under this section unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.
- D. In determining whether a statement possesses particularized guarantees of trustworthiness and reliability under subdivision B 2, the court shall consider, but is not limited to, the following factors:

1. The child's personal knowledge of the event;
  2. The age and maturity of the child;
  3. Certainty that the statement was made, including the credibility of the person testifying about the statement and any apparent motive such person may have to falsify or distort the event including bias, corruption or coercion;
  4. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;
  5. The timing of the child's statement;
  6. Whether more than one person heard the statement;
  7. Whether the child was suffering pain or distress when making the statement;
  8. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;
  9. Whether the statement has internal consistency or coherence, and uses terminology appropriate to the child's age;
  10. Whether the statement is spontaneous or directly responsive to questions;
  11. Whether the statement is responsive to suggestive or leading questions; and
  12. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.
- E. The court shall support with findings on the record, or with written findings in a court not of record, any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the out-of-court statement.

**Use of videotaped statements of complaining witnesses as evidence VA Code §63.2-1523**

- A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or §20-107.2, a recording of a statement of the alleged victim of the offense, made prior to the proceeding, may be admissible as evidence if the requirements of subsection B are met and the court determines that:
1. The alleged victim is the age of twelve or under at the time the statement is offered into evidence;
  2. The recording is both visual and oral, and every person appearing in, and every voice recorded on, the tape is identified;
  3. The recording is on videotape or was recorded by other electronic means capable of making an accurate recording;

4. The recording has not been altered;
  5. No attorney for any party to the proceeding was present when the statement was made;
  6. The person conducting the interview of the alleged victim was authorized to do so by the child-protective services coordinator of the local department;
  7. All persons present at the time the statement was taken, including the alleged victim, are present and available to testify or be cross examined at the proceeding when the recording is offered; and
  8. The parties or their attorneys were provided with a list of all persons present at the recording and were afforded an opportunity to view the recording at least ten days prior to the scheduled proceedings.
- B. A recorded statement may be admitted into evidence as provided in subsection A if:
1. The child testifies at the proceeding, or testifies by means of closed-circuit television, and at the time of such testimony is subject to cross examination concerning the recorded statement or the child is found by the court to be unavailable to testify on any of these grounds:
    - a. The child's death;
    - b. The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify;
    - c. The child's total failure of memory;
    - d. The child's physical or mental disability;
    - e. The existence of a privilege involving the child;
    - f. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason;
    - g. The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of closed-circuit television; and
  2. The child's recorded statement is shown to possess particularized guarantees of trustworthiness and reliability.
- C. A recorded statement may not be admitted under this section unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.



- D. In determining whether a recorded statement possesses particularized guarantees of trustworthiness and reliability under subdivision B 2, the court shall consider, but is not limited to, the following factors:
1. The child's personal knowledge of the event;
  2. The age and maturity of the child;
  3. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;
  4. The timing of the child's statement;
  5. Whether the child was suffering pain or distress when making the statement;
  6. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;
  7. Whether the statement has a "ring of verity," has internal consistency or coherence, and uses terminology appropriate to the child's age;
  8. Whether the statement is spontaneous or directly responsive to questions;
  9. Whether the statement is responsive to suggestive or leading questions; and
  10. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.
- E. The court shall support with findings on the record, or with written findings in a court not of record, any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the recorded statement

#### **Court may order certain examinations**

**VA Code §63.2-1524**

The court may order psychological, psychiatric and physical examinations of the child alleged to be abused or neglected and of the parents, guardians, caretakers or siblings of a child suspected of being neglected or abused.

#### **Prima facie evidence for removal of child custody**

**VA Code §63.2-1525**

In the case of a petition in the court for removal of custody of a child alleged to have been abused or neglected, competent evidence by a physician that a child is abused or neglected shall constitute prima facie evidence to support such petition.

#### **Appeals of certain actions of local departments**

**VA Code §63.2-1526**

- A. A person who is suspected of or is found to have committed abuse or neglect may, within thirty days of being notified of that determination, request the local department rendering such determination to amend the determination and the local department's related records. Upon written request, the local department shall provide the appellant all information used in making

its determination. Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of a collateral witness or any other person shall not be released if disclosure may endanger his life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released. The local department shall hold an informal conference or consultation where such person, who may be represented by counsel, shall be entitled to informally present testimony of witnesses, documents, factual data, arguments or other submissions of proof to the local department. With the exception of the local director, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the informal conference. If the local department refuses the request for amendment or fails to act within forty-five days after receiving such request, the person may, within thirty days thereafter, petition the Commissioner, who shall grant a hearing to determine whether it appears, by a preponderance of the evidence, that the determination or record contains information which is irrelevant or inaccurate regarding the commission of abuse or neglect by the person who is the subject of the determination or record and therefore shall be amended. A person who is the subject of a report who requests an amendment to the record, as provided above, has the right to obtain an extension for an additional specified period of up to sixty days by requesting in writing that the forty-five days in which the local department must act be extended. The extension period, which may be up to sixty days, shall begin at the end of the forty-five days in which the local department must act. When there is an extension period, the thirty-day period to request an administrative hearing shall begin on the termination of the extension period.

- B. The Commissioner shall designate and authorize one or more members of his staff to conduct such hearings. The decision of any staff member so designated and authorized shall have the same force and effect as if the Commissioner had made the decision. The hearing officer shall have the authority to issue subpoenas for the production of documents and the appearance of witnesses. The hearing officer is authorized to determine the number of depositions that will be allowed and to administer oaths or affirmations to all parties and witnesses who plan to testify at the hearing. The Board shall adopt regulations necessary for the conduct of such hearings. Such regulations shall include provisions stating that the person who is the subject of the report has the right (i) to submit oral or written testimony or documents in support of himself and (ii) to be informed of the procedure by which information will be made available or withheld from him. In case of any information withheld, such person shall be advised of the general nature of such information and the reasons, for reasons of privacy or otherwise, that it is being withheld. Upon giving reasonable notice, either party at his own expense may depose a nonparty and submit such deposition at the hearing pursuant to Board regulation. Upon good cause shown, after a party's written motion, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing, except that alleged child victims of the person and their siblings shall not be subpoenaed, deposed or required to testify. The person who is the subject of the report may be represented by counsel at the hearing. Upon petition, the court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is

subject to judicial review. Such hearing officers are empowered to order the amendment of such determination or records as is required to make them accurate and consistent with the requirements of this chapter or the regulations adopted hereunder. If, after hearing the facts of the case, the hearing officer determines that the person who is the subject of the report has presented information that was not available to the local department at the time of the local conference and which if available may have resulted in a different determination by the local department, he may remand the case to the local department for reconsideration. The local department shall have fourteen days in which to reconsider the case. If, at the expiration of fourteen days, the local department fails to act or fails to amend the record to the satisfaction of the appellant, the case shall be returned to the hearing officer for a determination. If aggrieved by the decision of the hearing officer, such person may obtain further review of the decision in accordance with Article 5 (§2.2–4025 et seq.) of the Administrative Process Act (§2.2–4000 et seq.).

- C. Whenever an appeal of the local department's finding is made and a criminal charge is also filed against the appellant for the same conduct involving the same victim as investigated by the local department, the appeal process shall automatically be stayed until the criminal prosecution in circuit court is completed. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation.

